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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

Estate of JAMES KOR, Deceased.

JAMES SAMUEL KOR, JR.,
Plaintiff and Appellant,

v.

PATRICIA LUCILLE KOR,
Defendant and Respondent.

A132715

(Contra Costa County
Super. Ct. No. P08-00103)

In this probate action, plaintiff James Samuel Kor, Jr. appeals from the denial of his creditor's claim for child support unpaid by decedent James Kor, his father. He also claims the probate court erred in denying his motion for appointed counsel (plaintiff is incarcerated). We agree with the probate court that plaintiff lacks standing to assert a claim for past child support, and conclude the court did not err in failing to appoint counsel for him. Accordingly, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff was born in September 1956 to decedent and Vivian Allen, formerly Vivian Vaudene Kor. His parents divorced in 1965 after having four children together. Decedent later married defendant Patricia Lucille Kor.

On November 15, 1978, a writ of execution for a judgment for unpaid child support was issued by the Superior Court, County of Tulare, in favor of Allen and against decedent in the principle sum of \$87,566.19.¹

Decedent died intestate on July 5, 2007.

On February 4, 2008, defendant petitioned the court to be appointed as a personal representative to administer decedent's estate.

On July 7, 2008, Allen filed a creditor's claim against decedent's estate for \$113,745.18, plus interest.

On July 9, 2008, plaintiff filed a motion for appointment of counsel. The motion was denied without prejudice.

On September 18, 2008, the probate court appointed defendant as administrator of decedent's estate.

On December 9, 2008, Allen filed another claim against decedent's estate for the amount of \$113,745.18, plus interest.

On January 21, 2009, Allen filed a complaint on the rejected claim for damages for nonpayment of child support. In her accompanying declaration, Allen stated that decedent had failed to provide financial support for their four children from 1965 to 1979.

On February 3, 2009, a final inventory and appraisal was filed, setting the value of the estate at \$157,000.

On March 4, 2009, plaintiff filed "informal" papers that, among other things, challenged Allen's right to seek a creditor's claim from the estate. Essentially, he argued he and his siblings are entitled to the arrearages as the intended beneficiaries of the unpaid child support, not his mother. He expressed his view that Allen is an undeserving parent who harmed her children rather than raised them.

On May 4, 2009, Allen's complaint based on the rejected claim for nonpayment of child support was dismissed.

¹ A subsequent declaration filed by Allen on February 15, 1979, states that the correct balance due through February 1979 was \$113,745.18.

On June 11, 2009, the probate court dismissed the papers filed by plaintiff on March 4, 2009.

On December 27, 2010, plaintiff filed his own creditor's claim against decedent's estate for the unpaid child support, on behalf of himself and his three siblings. He argued that the probate court had jurisdiction to make a binding determination on the issue even though it had already denied Allen's claim.

On February 1, 2011, the probate court ruled on plaintiff's claim and determined he lacked standing: "The court finds [plaintiff] is without standing to assert a claim on behalf of [Allen]. He has not asserted a claim in his own right, and such claim now would be untimely."

On April 28, 2011, plaintiff filed a motion to quash the order denying his creditor's claim.

On June 14, 2011, the probate court denied "on the merits" the motion to quash the order denying his creditor's claim. This appeal followed.

DISCUSSION

I. Plaintiff Lacks Standing to Pursue His Claim

It appears plaintiff, in filing his creditor's claim, is seeking payment for child support (his own support) that was not paid by decedent during the time when decedent was under an obligation to make such payments.²

We begin with basic principles of child support obligations. "Parents have a statutory obligation to support their children." (*In re Marriage of Gregory* (1991) 230 Cal.App.3d 112, 115.) A court order to pay child support generally continues until the child reaches 18 years of age, or until the occurrence of any contingency specified in the order. (*Ibid.*) A court-ordered child support obligation survives the death of the noncustodial parent and becomes a charge upon his or her estate. (*Taylor v. George* (1949) 34 Cal.2d 552, 556; *In re Marriage of Bertrand* (1995) 33 Cal.App.4th 437, 440; *Gregory, supra*, at p. 115.)

² Plaintiff's opening brief raises several other issues, only one of which is properly before this court.

Significantly, under California law, “the custodial parent, not the child, has the beneficial interest in collecting arrearages in child support.” (*County of Shasta v. Smith* (1995) 38 Cal.App.4th 329, 335; see also *In re Marriage of Lackey* (1983) 143 Cal.App.3d 698, 706; *In re Marriage of Utigard* (1981) 126 Cal.App.3d 133, 141–143.) The underlying reason for this general rule is that payment of arrearage can be assumed to be a payment to reimburse the custodial parent for support of the children, rather than a payment for the benefit of the children themselves: “It is well established that when a custodial parent brings an action for payment of child support arrearages as distinguished from an initial action for support or request for modification, the child is not the real party in interest. [Citation.] This is so essentially because these proceedings are seen as a means of providing *reimbursement* to the custodial parent who is presumed to have supported the child during the period arrearages accrued.” (*Lackey, supra*, at p. 706.) We also note Family Code section 4000 (formerly Civ. Code, § 4703)³ provides: “If a parent has the duty to provide for the support of the parent’s child and willfully fails to so provide, *the other parent, or the child by a guardian ad litem*, may bring an action against the parent to enforce the duty.” (Italics added.) There is no corresponding provision allowing adult children to bring actions for child support that was unpaid by a noncustodial parent during their minority.

Here, plaintiff never obtained a judgment awarding “child support” to him in his own name. Nor could he have established such a claim under California law. His mother’s purported claim was awarded to her and not to plaintiff. There is nothing in the record showing his mother ever agreed that he could stand in her stead in an effort to recover the “debt” of decedent.⁴ It also appears she has not appealed the probate court’s

³ Former Civil Code section 4703 provided: “When a parent has the duty to provide for the support, maintenance, or education of his child and willfully fails to so provide, either parent, or the child by his guardian ad litem, may bring an action in the superior court against the errant parent for the support, maintenance, or education of the child.”

⁴ In his motion to quash the order denying his claim, plaintiff strenuously asserted that he had never sought to litigate on behalf of his mother. However, it is the proceeds from the very judgment that *she* obtained against his father that plaintiff sought to secure for himself and his siblings via his creditor’s claim.

ruling denying her own claim for unpaid child support. In sum, plaintiff has no standing in this instance.

II. The Trial Court Did Not Err in Failing to Appoint Counsel

Plaintiff contends the trial court erred in denying his motion to appoint counsel for him. We disagree.

In *Payne v. Superior Court* (1976) 17 Cal.3d 908, our Supreme Court held that a state prisoner who is joined as a defendant in civil litigation that threatens his or her “protection of property” is entitled to meaningful access to the courts to defend that interest. (*Id.* at p. 916.) In *Payne* and the subsequent decision *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, 203–205, the court suggested that an incarcerated civil defendant is entitled to the appointment of counsel if there is no other means to secure the prisoner’s access to the courts.

Although *Payne* and *Yarbrough* were unambiguously limited to incarcerated civil defendants (see *Yarbrough, supra*, 39 Cal.3d 197, 205), subsequent Court of Appeal decisions, beginning with *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, have extended the right of meaningful court access to incarcerated plaintiffs as well, reasoning that because inmates have a statutory right to file civil lawsuits, it follows they must have the right to meaningful court access to pursue those claims. (*Id.* at p. 792.) *Wantuch* held that civil trial courts must make accommodations for the restricted freedoms of inmates to ensure that, despite these restrictions, they are not deprived of the opportunity to prosecute a civil lawsuit. The court listed a variety of courtroom procedures that could be adopted to ensure incarcerated plaintiffs are not deprived of the opportunity to participate in litigation, including the appointment of counsel as a last resort, and noted that the choice of an appropriate remedy depends on the particular circumstances, including “the prisoner’s literacy, intelligence and competence to represent himself or herself . . .” (*Id.* at p. 793.) Ultimately, the court held, the choice of remedy lies in the discretion of the trial court. “A prisoner does not have the right to any particular remedy. A prisoner may not, for example, compel a trial court to appoint counsel. [Citations.] The right of an indigent prisoner to appointed counsel in a civil action arises only when there is a bona

fide threat to his or her personal or property interests and no other feasible alternative exists. [Citations.] Nor may a prisoner ordinarily compel his or her appearance in court.” (*Id.* at pp. 793–794, fn. omitted.)

Our review of the appellate record and plaintiff’s briefs filed in this court demonstrate that he is quite capable of ably representing himself. We find no abuse of discretion in the trial court’s denial of his motion for appointment of counsel.

DISPOSITION

The order dismissing plaintiff’s creditor’s claim is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.